AFR (48)

HIGH COURT OF CHHATTISGARH: BILASPUR

REVIEW PETITION NO. 01 OF 2007

Petitioner: S.R.Chavan, S/o. R.S.Chavan

Vs

Respondents: Cement Corporation of India and others.

Post for order: 1st-10-2007

Sd/-
Satish K. Agnihotri
Judge

29-10-2007
09.

(99)

HIGH COURT OF CHHATTISGARH: BILASPUR

REVIEW PETITION NO. 01 OF 2007

APPLICANT PETITIONER

S.R. Chavan, S/o. Shri R.S. Chavan, Aged about 45 years, Ex. Dy. Manager (Mktg) Cement Corporation of India, Dist. Bilaspur (CG).

Versus

RESPONDENTS

1) Cement Corporation of India, through Chairman & Managing Director, Scope Complex, 7, Lodhi Road, New Delhi.

2) Executive Director, Cement Corporation of India, Scope Complex, 7 Lodhi Road, New Delhi.

3) The General Manager, Akaltara Cement Factory, CCI, BILASPUR – 495 001 (CG).

4. Shri P.C. Shrivastava, Rtd. DIG Enquiry Officer, Flat No.1269, Sector-A, Packet-8, Vasant Kunj, New Delhi 110 080.

(Review Petition for reviewing order dated 5th December, 2006 in W.P.No.651 of 1996).

SB: Hon'ble Mr. Satish K. Agnihotri, J.

PRESENT:

Shri K.R. Nair, counsel for the petitioner.

Shri P.S. Koshy, counsel for the respondents.

ORDER

(Passed on 15th October, 2007)

This review petition is filed by the writ petitioner, seeking review of the judgment and order dated 5-12-2006 passed by this Court in Writ Petition No. 651 of 1996 (S.R. Chavan Vs. Executive Director, Cement Corporation of India Ltd., and others).

2) The grounds for review of the judgment and order dated 5-12-2006 are as under:

i) The Executive Director, who passed the dismissal order dated 9-8-1994, is not the competent authority and therefore the order passed by an incompetent authority is illegal and bad in law, which was not considered by this Court while passing the judgment and order in the writ petition.

ii) The writ petitioner's counsel wrongly submitted in the argument that JSM is the appointing authority and the opposite side counsel engaged by the Respondent CCI had argued that the Executive Director is equivalent to the post of JSM and therefore Executive Director is the competent authority being equal in rank to JSM to issue the dismissal order. This Court, on the basis of those arguments, held in its order dated 5-12-2006 that "the second contention of the counsel that the impugned order was passed by a non-competent officer is also factually incorrect, as it appears that the Joint Senior Manager (Personnel) is equal to the Executive Director (Marketing). JSM (Personnel) is the appointing authority and that he is equal to the Executive Director (Marketing)".

iii) The counsel further fails to bring to the notice of this Court the fact that, the competent authority for making appointment

to the post of Dy. Manager and for his dismissal from service, was not the Joint Senior Manager (Personnel) or the Executive Director, but the Director (Personnel) is the competent authority, who is much senior to Executive Director and the Joint Senior Manager.

3) Shri Nair, learned counsel appearing for the petitioner would submit that, there is an error apparent on the face of it as the scheme showing the delegation of powers on disciplinary matters appended to the Cement Corporation of India Ltd., Conduct, Discipline & Appeal Rules (for short, "the CCI Rules") (Annexure A/1) to the writ petition, clearly indicates that the Director (Personnel/Projects/Operations/Finance) has power of appointment/promotion in respect of sanctioned posts carrying a scale of pay maximum of which does not exceed Rs.1700/- whereas the Project/Factory Corporate Office Managers in the pay scale of Rs.2250/- - 2750/- / Rs.2000/- has powers of appointment and promotion of officers carrying a scale of pay maximum of which does not exceed Rs.1200/-. Thus, Director (Personnel) is a competent authority to dismiss the petitioner, who was holding the post of Deputy Manager (Mktg) carrying a pay scale of Rs.1300/- - 1700/-, maximum of which does not exceed Rs.1700/- Therefore, the dismissal order dated 9-8-1994 passed by the Executive Director (Mktg) is bad in law and deserves to be quashed. Learned counsel appearing for the petitioner has placed reliance on the following decisions: (1) Krishna Kumar Vs The Divisional Assistant Electrical Engineer, Central Railway and Others,[1] (2), Scientific Adviser to the Ministry of Defence and Others Vs S. Daniel and Others, [2] (3) Union of India and Others Vs N.V. Phaneendran, [3] (4) V.C., Banaras Hindu University and Others Vs Shrikant [4] (5) M/s. Goa Shipyard Ltd. Vs Babu Thomas[5].

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4) Per contra, Shri P.S. Koshy, learned counsel appearing for the respondents would submit that the review petition be not allowed as the petitioner cannot change his stand in review petition which virtually amounts to hearing afresh. Secondly, the power of the Director (Personnel) has been delegated to the Executive Director (Mktg) by circulars dated 8-5-1992 and 18-11-1993. All the powers of the Director (Personnel) in respect of appointment, promotion, termination, dismissal, reduction in rank and suspension etc., were delegated to the Executive Director (Mktg) by office order dated 18-11-1993. Thus, there is no error apparent on the face of record and even otherwise, the order passed by the Executive Director (Mktg) was legal and valid.

5) I have heard learned counsel for the parties, perused the pleadings and the documents appended thereto.

6) Learned counsel appearing on behalf of the petitioner has categorically submitted that the order passed in writ petition was on the basis of submissions made by the counsel at the time of hearing of the petition, as such there was no error in the finding recorded by the Court. However, the argument advanced by the counsel was contrary to the pleadings and the relevant rules. Thus, this Court in review should consider the points raised in the pleadings and relevant provisions of law.

7) It is well settled principle of law that under the garb of review petition, the petitioner should not be permitted to argue the entire case afresh which would amount to convert the review petition into an appeal and the same is not sustainable in law. (See Smt. Meera Bhanjan Vs. Smt. Nirmala Kumar Chowdhary[6] Lily Thomas etc. Vs. Union of India and others[7], Ajit Kumar Rath Vs. State of Orissa and others[8], Government of

T.N. and others Vs. M. Ananchu Asari and others[9] and Kerala State Electricity Board Vs. Hitech Electrothermicsm & Hydropower Ltd., and others[10].)

8) Rule 28 of the CCI Rules provides in the note that for the purpose of sub rule, the disciplinary authority will be determined with reference to the post actually held by the employee at the time of imposing penalty on him, or if he is under suspension, the post held by him at the time of suspension. Rule 28 reads as under:

> "**28. Disciplinary Authorities**:
> The appointing authority/disciplinary authority as specified in the Schedule appended thereto or any other authority higher than it may impose any of the penalties specified in Rule 26.
>
> NOTE: For the purpose of this sub-rule, the Disciplinary Authority will be determined with reference to the post actually held by an employee at the time of imposing penalty on him, or if he is under suspension, the post held by him at the time of suspension"

9) There is no dispute that the power of Director (Personnel) who was initially the appointing authority of the Deputy Manager (Mktg) carrying a pay scale of maximum which does not exceed Rs.1700/-, was delegated to the Executive Director (Mktg) vide office order dated, 18-11-1993 (Annexure R/2) which reads as under:

"November, 18, 1993

OFFICE ORDER

The schedule of sub-delegation of powers of Director (Mktg) to be exercised by Executive Director (Mktg) is enclosed.

Sd/-

(K. MARKANDEYA)
Jt. Senior Manager (M & CS)

POWERS OF DIRECTOR (MARKETING) TO BE EXERCISED BY EXECUTIVE DIRECTOR (MKTG)

Sl. No.	Description of Power Delegate	Extent of Power	Remark
	ESTABLISHMENT/ADMINISTRATIVE MATTERS		
1	XXXX	XXXX	XXXX
2	XXXX	XXXX	XXXX
3	XXXX	XXXX	XXXX
4.	Termination of service and acceptance of resignation	Full power for which he is the appointing authority subject to observance of relevant rules and regulations.	Xxxxx
5.	Suspension from service Disciplinary action and punishment with reduction in rank etc	a) Full powers for termination, dismissal, reduction in rank and suspension for which he is the appointing authority	1. Powers to impose any punishment shall be exercised after establishment of charges by conducting departmental Enquiry as per prescribed procedure.
		b) All other punishments by authority one steps lower than appointing authority	2) Appellant authority for its 4 & 5 will be one step higher than the appointing authority.

10) Note to Rule 28 of the CCI Rules, is very clear that the competence of the disciplinary authority would be seen at the time of imposing penalty on the employee. The dismissal order was passed on 9-8-1994 and the power of appointment, dismissal, suspension etc., was delegated to the Executive Director (Mktg) earlier in November, 1993. Therefore, the

Executive Director (Mktg) was fully competent to pass the impugned dismissal order dated 9-8-1994.

11) In the matter of Krishna Kumar (supra) relied on by the counsel for the petitioner, it was held by the Supreme Court that, whether the authority is subordinate in rank to another has to be determined with reference to the state of affairs existing on the date of appointment. The ratio laid down by the Supreme Court may not be relevant to the facts of the present case, as the authority at the time of appointment may be Director (Personnel), but prior to dismissal of the petitioner, the power of the Director (Personnel) was delegated to the Executive Director (Mktg), who exercised the power on behalf of the Director (Personnel). There was no challenge to the validity of such delegation either in the main petition or in the review petition.

12) In the matter of Scientific Advisor to the Ministry of Defence and Others (supra) the Supreme Court upholding the ratio in Roopchand Vs State of Punjab[11] held that, the disciplinary action initiated by the delegate must be regarded in law as that of the principal himself.

13) In the matter of Union of India and others Vs N.V. Phaneedran (supra) relied on by the petitioner the Supreme Court has referred the Case of Scientific Advisor to the Ministry of Defence and Others, with approval.

14) The ratio laid down in case of M/s. Goa Shipyard Ltd.,(supra) is of no help to the case of the petitioner on facts as the office memo delegating the power of appointment, dismissal, suspension exercised by

the Director (Personnel) came into effect prior to the order of dismissal dated 9-8-1994.

15) For the reasons mentioned hereinabove, there is no merit in the review petition and as such, the same is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

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1. AIR, 1979 (SC) 1912
2. 1990 (Supp) SCC, 374
3. 1995 (6) SCC, 45
4. 2006 (11)SCC, 42
5. 2007 AIR SCW 4716
6. AIR 1995 SC 455
7. AIR 2000 SC 1650
8. AIR 2000 SC 85
9. (2005) 2 SCC 332
10. (2005) 6 SCC 651
11. AIR 1963 (SC) 1503